

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA,) DOCKET NO. 1:15-CR-5
)
 vs.)
)
JOHN MICHAEL AWTREY,)
)
 Defendant.)
_____)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE MARTIN REIDINGER
UNITED STATES DISTRICT COURT JUDGE
JUNE 2, 2016

APPEARANCES:

On Behalf of the Government:

DAVID ANDREW THORNELOE, ESQ.,
Assistant United States Attorney
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Charlotte, North Carolina 28202

On Behalf of the Defendant:

MARY ELLEN COLEMAN, ESQ.,
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LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

THURSDAY, JUNE 2, 2016:

(Court called to order at 3:48 p.m.)

THE COURT: The next matter we have on the calendar is United States versus John Michael Awtrey, which is before the Court for the sentencing of the defendant on charges of distribution of child pornography in violation of 18 U.S.C. Section 2252A(a)(2), receipt of child pornography in violation of 18 U.S.C. Section 2252A(a)(2), and possession of child pornography in violation of 18 U.S.C. Section 2252(a)(a)(5)(B).

Ms. Coleman, good afternoon.

MS. COLEMAN: Afternoon, Your Honor.

THE COURT: Is the defendant prepared to proceed?

MS. COLEMAN: He is, Your Honor.

THE COURT: Mr. Thorneloe, is the government prepared to proceed?

MR. THORNELOE: Yes, Your Honor.

THE COURT: In preparation for this hearing I've noted that there does not appear to be any objections to the Presentence Report. I've not seen any departure motions or sentencing memorandum. Are there any such items filed in preparation?

MS. COLEMAN: No, Your Honor.

THE COURT: Any further from the government?

1 MR. THORNELOE: There is not, Your Honor.

2 We do expect that a -- I will inform the Court today
3 about a resolution concerning restitution, and I have a
4 memorandum, similar to the one you've seen recently, where
5 both parties agree. We'll inform the Court today of what
6 that's going to say, and then I will file that, probably
7 tomorrow.

8 THE COURT: Okay. Very good.

9 Let's see, this matter -- since it was resolved
10 by -- yeah, I think I said earlier, defendant's plea of
11 guilty, that's not correct. This was done by stipulated bench
12 trial rather than guilty plea. So there's no need for
13 completing the Rule 11. I will move straight to the issue of
14 the Presentence Report.

15 Mr. Awtrey, I need for you to stand for a moment
16 because I have some questions for you.

17 There is a document that has been prepared by the
18 probation officer, I see that your attorney is showing you a
19 copy there at your table.

20 On the upper left-hand side it has a caption that
21 reads "United States of America versus John Michael Awtrey."
22 On the upper right-hand side it has the title that reads
23 "Presentence Investigation Report."

24 Have you seen this document before today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had an opportunity to review it
2 with your attorney?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the contents of that
5 document?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Ms. Coleman, have you had an opportunity
8 to review the Presentence Report with Mr. Awtrey?

9 MS. COLEMAN: Yes, Your Honor.

10 THE COURT: Are you satisfied that he understands
11 the contents of that document?

12 MS. COLEMAN: Yes, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Awtrey. You may
14 take your seat.

15 With regard to the Presentence Report, as I
16 mentioned earlier it does not appear that there are any
17 objections for us to resolve. Are there any issues concerning
18 the Presentence Report that we need to take up? Any for the
19 defendant?

20 MS. COLEMAN: No, Your Honor.

21 THE COURT: Any for the government?

22 MR. THORNELOE: No, Your Honor.

23 THE COURT: With that the Court will accept the
24 Presentence Report as written, based thereon the Court will
25 find that the total offense level in this case is 37, and the

1 criminal history category is I.

2 Based on that total offense level and criminal
3 history category the Court concludes that the guideline range
4 in this case would call for a term of incarceration between
5 210 and 262 months.

6 And in light of the fact that there are multiple
7 counts of conviction, the 20-year statutory maximum that
8 applies to any one count would not limit the guideline range
9 because they could be made consecutive, at least in part.
10 Therefore, the guideline range in this case calls for a term
11 of incarceration of 210 and 262 months.

12 Ms. Coleman, did I calculate that correctly?

13 MS. COLEMAN: Yes, Your Honor.

14 THE COURT: Do you agree, Mr. Thorneloe?

15 MR. THORNELOE: I do, Your Honor.

16 THE COURT: Ms. Coleman, what is the appropriate
17 sentence for me to impose with regard to Mr. Awtrey in this
18 case?

19 MS. COLEMAN: Thank you, Your Honor. Mr. Awtrey is
20 a 56-year-old man without so much as even a prior traffic
21 ticket on his record. He is someone who has been employed and
22 it's proven in his Presentence Report, consistently throughout
23 his life. He has no drug or alcohol addiction. He has no
24 mental health diagnosis.

25 He's spent many years prior to this case caring for

1 an ill wife, the mother of his two younger children that
2 eventually passed away, and subsequently spent several months,
3 at least, caring for an ailing father who also passed away.

4 For all intents and purposes, he's led a very
5 law-abiding and what most individuals would consider to be a
6 normal life. This case has certainly torn that life apart.
7 He's very remorseful about that because he knows that it was
8 his own decisions, and it was his own doing that has done
9 that, and it has caused a considerable amount of strain and
10 change in his family.

11 I can say, Your Honor, that since his arrest
12 Mr. Awtrey has made some very responsible decisions regarding
13 his family. He has agreed and allowed his two younger
14 children to be adopted by his adult daughter, who I believe is
15 present in the courtroom today. He has renewed his faith, and
16 has spent many hours -- because I don't know if it's really
17 obvious, he's been in custody for over two and a half years
18 and he has spent that time positively studying, doing as many
19 correspondence courses as he has been able to take, and also
20 ministering to other individuals that are in custody with him.

21 We are not blind to the fact that obviously the
22 issue that stands out in this case is the number of images. I
23 think that there are two things that we would like to address
24 in regard to that.

25 First of all, you know, we have previously discussed

1 many times in this court, that as far as the Guidelines are
2 concerned, there are issues in the Guidelines that they do not
3 necessarily take into consideration contemporary experience or
4 changes in technology.

5 And what we do know now is that images are available
6 to be downloaded and preserved in numbers and amounts quite
7 easily, and often in ways that were not anticipated when these
8 Guidelines were originated.

9 We think that the ease of that technology that --
10 and it's probably contributed to the number of images in this
11 case.

12 Additionally, what may not be readily apparent in
13 the Presentence Report, is that Mr. Awtrey has exhibited
14 some -- reporting some compulsive type behavior in the past.
15 It was evident in the search warrant, just in his residence.
16 It was a former motel. It was somewhat of a sprawling piece
17 of property that was virtually covered with old automobiles
18 and junk. And I think that there was almost, like, a
19 compulsive collecting nature to this image count. Because
20 looking at it, no human could really even view the amount of
21 images that were coming in and being stored on his machinery.

22 We would ask the Court to consider Mr. Awtrey's
23 guideline range in comparison to other cases that have been
24 before the Court.

25 I don't mean to sound like a broken record, but this

1 is a guideline range that has problems. We know that there
2 are a spectrum of types of conduct that this guideline
3 encompasses. If the number of images is taken into
4 consideration, we believe it is appropriate to consider them
5 within that spectrum, but not insofar as granting an upward
6 departure, which is what the back part of the Presentence
7 Report doesn't recommend but suggests may be available.

8 If the image count is taken into consideration, we
9 believe it's more appropriately within that spectrum of
10 offenders who have lower image counts or don't engage in
11 trading. That's where it is more appropriately considered.

12 And we would ask the Court to consider, you know,
13 the main argument and the problem with this guideline range is
14 that for the most part it tends to congregate individuals with
15 similar increases towards the top of the statutory max.

16 And the statutory max without consecutive sentences
17 is 20 years in this case, and his potential guideline sentence
18 is congregated in that.

19 And we do think that it overstates the 3553 factors.
20 And that sentence within this guideline range is not necessary
21 in this particular case, and that a variance is probably
22 appropriate, based upon the behavior in this case in
23 comparison to other cases.

24 We were before the Court several weeks ago where a
25 case was argued to be the worst case that the government had

1 seen in this Court, and yet that individual's ultimate
2 sentence was even lower than the guideline range that
3 Mr. Awtrey is currently facing.

4 So for that reason and because the Guidelines are so
5 problematic, we do think the Court should consider a
6 non-guideline sentence.

7 But I would like to express that Mr. Awtrey is
8 someone who, as I said, he's not someone in necessarily need
9 of drug and alcohol rehabilitation, or mental health
10 rehabilitation. He's certainly open to sex offender treatment
11 which would be appropriate in this situation.

12 But I do think he's one, considering his background
13 and circumstances, will be very appropriately sentenced with a
14 shorter sentence.

15 He's not someone, I think, that the Court will
16 necessarily have to -- honestly, I don't think he's someone
17 that the Court would see again. I think he's someone who can
18 abide by rules, and with appropriate supervision, will not
19 reoffend. And for that reason I do not think that a sentence
20 in this very high guideline range is necessary in this case.
21 Thank you.

22 THE COURT: Thank you.

23 Mr. Thorneloe, what's the position of the
24 government?

25 MR. THORNELOE: Your Honor, as I said many times

1 before, the government has not yet abandoned the Guidelines.
2 For that reason I'm not going to say that we agree with a
3 departure sentence or variant sentence. But in this case I
4 would ask that the Court go not lower than a 15-year sentence.

5 As we look at some of the factors that exist in this
6 case we find that some of the things that the sentencing
7 commission looked at a few years ago and suggested as things
8 to look for exist in this case. And it is that this defendant
9 had involvement in online communities, originally detected
10 because he's posting on a file-sharing photo-sharing website
11 based out of Russia and commenting on sexually explicit images
12 of children.

13 And then from there we see that he has a long period
14 of time that he's involved in this material. One of the
15 charges goes back to 2007. He's not actually detected until
16 2014.

17 And what we also find that it is not just that he
18 did something in 2007 and a little bit later in 2014. This is
19 a man that worked at it. It isn't just because of technology
20 that he has so many images and so many computers.

21 You look at the Presentence Investigation Report, we
22 see that, you know, it's not just that he had several hundred
23 thousand images, he filled up multiple computers and multiple
24 hard drives, and all kind of devices with images. I mean, he
25 was -- I don't know if it's because of -- I don't know why he

1 did this.

2 But this forensic analyst that is sitting next to me
3 spent nearly a year going through this material and it was
4 exhausting, and he can't stop because what if that last image
5 is a production image. So you have to go through all this
6 material. But it was a huge resource drain to work this case.

7 We saw it as the quality of this material is younger
8 oriented, there's pictures of babies and toddlers, there's the
9 torture and sex acts upon those other individuals.

10 The quality is bad. Quantity certainly has a
11 quality all its own, which it does in this case, certainly,
12 but the nature of this material is bad, worse than usual.

13 And I agree with Ms. Coleman when it comes to saying
14 that -- I can't come up to this Court and say every case is
15 the worst case -- this is the worst we've seen. And I won't
16 say that. I won't say that this defendant shocks me worse
17 than Defendant Lamb did, a couple weeks ago. But every case
18 is unique.

19 We see 221 known victims. It's a long list of
20 tragedy in the Presentence Report.

21 In this case there could have been a lot more
22 restitution requests, there were three in this case, and we've
23 come to an agreement on those.

24 But we see some of the victims that we're used to
25 seeing. We see some we've never seen before that we're not

1 used to seeing.

2 Your Honor, for these reasons we think you should
3 find that a sentence of no less than 15 years is appropriate.
4 This is an individual who was sexually gratified by the abuse
5 of children.

6 The Court knows that -- it heard argument before
7 about memorialization of this type of torture, and how tragic
8 it is when an individual gets pleasure in such things.

9 So, Your Honor, we ask for the sentence -- I do want
10 to mention specifically with respect to restitution, three
11 series reported to us for restitution requests. One of them
12 is the Eight Kids Series that's known. As this Court knows,
13 there are five victims in the Eight Kids Series. And this
14 time around the defendant possessed three of those victims.

15 I mentioned, under pseudonyms, which victims those
16 are in my memorandum, as well as two other victims that we
17 named.

18 Payment for those and arrangements for that payment
19 will of course be in that memorandum. The total of that
20 restitution request is \$25,000. In this case it's \$5,000 per
21 victim.

22 Second, Your Honor, we have a little bit of an
23 unusual request in this case. This case has been particularly
24 a family tragedy. The defendant's biological children, the
25 two youngest, have been adopted by the oldest biological

1 child. And obviously there's some family tension and problems
2 as a result of this case. I won't go into that today with the
3 Court, but the defense has agreed with me that the defendant
4 will consent to a no contact order as a condition of
5 supervised release with respect to the two children who are
6 still minors today. That's been a request from the family for
7 me. The defendant doesn't have a problem with it. They
8 requested this even though it's quite likely those individuals
9 will be adults by the time this defendant ever gets out of
10 prison. So we are asking the Court to impose that.

11 I would like to make an additional filing with this
12 Court in which I would identify those individuals, but I would
13 do that under seal. And the defense indicates to me that they
14 have no objection to that request.

15 Thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 Mr. Awtrey, at this time you have the opportunity to
18 address the Court and to tell me anything that you feel I
19 should know before I make my decision regarding the case.

20 THE DEFENDANT: Your Honor, I'm sorry to the Court.
21 I have destroyed my life. I've destroyed my family's life,
22 and there's no excuse for it.

23 Since I've been incarcerated I've been trying to
24 focus on changing my life and proceeding toward the future,
25 trying to help other people with their problems while we've

1 been -- while in jail I've been trying to help other people.

2 Also, Your Honor, in the future, I would like to
3 either -- maybe be a teacher or a counselor and help people
4 work through issues trying to recover from problems.

5 I've even thought about maybe getting my CNA and
6 becoming, like, a hospice careworker.

7 And so, Your Honor, whether I'm, you know, inside
8 prison or outside prison, you know, I want to be a responsible
9 part of society again, and I want to be able to help other
10 people. That's all I can say, Your Honor.

11 THE COURT: Okay. Thank you, Mr. Awtrey.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Awtrey, I need for you to stand for
14 the imposition of the sentence in this case.

15 Pursuant to the Sentencing Reform Act of 1984, and
16 the case of United States versus Booker, it is the judgment of
17 this Court, having considered factors noted in 18 U.S.C.
18 Section 3553(a), that the defendant John Michael Awtrey is
19 hereby committed to the custody of the United States Bureau of
20 Prisons to be in prison for a term of 150 months.

21 With regard to my reasons for the sentence that I
22 have imposed here, that there are several factors that have
23 gone into this. I have said in many of these cases regarding
24 child pornography I have found the Guidelines to be of,
25 essentially, no use because they apply enhancements really

1 across the board rather than differentiating between cases.
2 They just lump all the cases together.

3 I won't go into a lot of detail as I went into that
4 the last case that I had that the prosecutor referred to the
5 case regarding Mr. Lamb. But those are my reasons why I think
6 the Guidelines are of little help.

7 So I try to look at each of these cases on an
8 individual basis and try to assess the seriousness of the
9 case. I try to assess whether or not the defendant appears to
10 be any sort of danger to the public. I try to assess what is
11 necessary to afford adequate deterrence, not just to this
12 defendant but to others who participate in this activity.

13 It's kind of hard to differentiate, in some
14 respects, the seriousness of these offenses because that then
15 implies that some are less serious than others and foreboding
16 the abuse of children is serious no matter what.

17 But still I do have to differentiate between these
18 cases. And here where -- generally speaking, where there is
19 no contact offense, I rarely go over 15 years in terms of the
20 sentence. Where it is not a production offense, I rarely go
21 with a sentence longer than 15 years.

22 So I look at cases such as what we have here with
23 Mr. Awtrey, where it is possession and distribution, within a
24 bracket, generally, of five years to 15 years with some
25 exceptions at both ends.

1 Here I see a case that tends toward the upper end of
2 that spectrum, simply because of the sheer size of the
3 collection, the sheer number of images, the sheer number of
4 victims.

5 I noted that there were a number of videos that were
6 identified by the length of the video, as opposed to the
7 number of videos. But if you assume that each video was, on
8 average, about two minutes in length, which these apparently
9 often are, this collection would come to over 3 million images
10 the way that it is counted for Guidelines purposes.

11 This is probably one of the two or three largest
12 collections of child pornography that have been involved in a
13 case where I have done the sentencing.

14 That's certainly a factor that tends toward the
15 upper end of this 5 to 15 year range.

16 Now I'll note, based on the information in the
17 Presentence Report, that a relatively small percentage of this
18 appears to have been material that was of an extreme nature,
19 even though some of it was, and that is taken into account as
20 well.

21 I've also taken into account the fact that there is
22 no evidence in this record that the defendant has been a
23 danger with regard to prior contact offenses or future contact
24 offenses.

25 But, as the prosecutor said, there are those factors

1 such as the defendant having been directly involved in an
2 online community that promotes this -- the collection and
3 distribution, sharing of this type of material and was
4 involved in it for a long time, and spent a lot of time doing
5 it.

6 Taking all of those factors into account, I believe
7 that the sentence that I've imposed, 150 months, which is 12
8 and a half years, is sufficient to reflect the seriousness of
9 the offense, it is sufficient to provide just punishment for
10 the offense, and it is sufficient to afford adequate
11 deterrence to conduct of this nature by this defendant, as
12 well as by others who participate in it. So for those reasons
13 I have imposed the sentence that I have.

14 The Court recommends that the defendant participate
15 in a sex offender treatment program during the period of
16 incarceration.

17 Upon release from imprisonment, the defendant shall
18 be placed on supervised release for a term, balance of his
19 life.

20 This term consists of a life term of supervised
21 release on each of Counts One through Three, with those terms
22 to run concurrent.

23 Within 72 hours of release from custody of the
24 Bureau of Prisons the defendant shall report in person to the
25 probation office in the district to which the defendant is

1 released.

2 While on supervised release the defendant shall not
3 commit another federal, state, or local crime, and shall
4 comply with the standard conditions that have been adopted by
5 the Court in the Western District of North Carolina.

6 In addition, the defendant shall comply with
7 following additional conditions:

8 The defendant shall have no contact, either direct
9 or indirect, at any time, for any reason with any of the
10 victims, or the victims' families, or any affected parties in
11 this matter unless provided with specific written
12 authorization to do so in advance by the United States
13 Probation Officer.

14 The defendant shall submit to a psycho-sexual
15 evaluation by a qualified mental health professional who is
16 experienced in the evaluation and managing of sexual offenders
17 as approved by the United States Probation Officer. The
18 defendant shall complete all the treatment recommendations and
19 abide by all the rules, requirements, and conditions of the
20 program until discharged. And the defendant shall take all
21 medications as prescribed.

22 The defendant shall submit to risk assessments,
23 psychological and physiological testing, which may include,
24 but is not limited to polygraph examination, and/or Computer
25 Voice Stress Analyzer, or other specific tests and monitor the

1 defendant's compliance with supervised release treatment
2 conditions, all at the direction of the United States
3 Probation Officer.

4 The defendant's residence and employment shall be
5 approved by the United States Probation Officer. Any proposed
6 change in residence or employment must be provided to the U.S.
7 Probation Officer at least ten days prior to the change and
8 pre-approved before the change may take place.

9 The defendant shall not possess any materials
10 depicting and/or describing "child pornography" and/or
11 "simulated child pornography" as those terms are defined in 18
12 U.S.C. Section 2256, nor shall the defendant enter any
13 location where such materials may be accessed, obtained or
14 viewed, including pictures, photographs, books, writings,
15 drawings, videos, or video games.

16 The defendant shall comply with requirements of the
17 Sex Offender Registration and Notification Act 42 U.S.C.
18 Section 16901 and following, as directed by the Probation
19 Officer, by the Bureau of Prisons, and by any state sex
20 offender registration agency in any state where the defendant
21 resides, works, is a student, or -- and the district of
22 conviction.

23 The defendant shall not associate or have any
24 verbal, written, telephonic, or electronic communications with
25 any person under the age of 18 except in the presence of a

1 parent or legal guardian of such minor; on the condition that
2 the defendant notify the parent or legal guardian of his
3 conviction prior history, and has written approval from the
4 United States Probation Officer. This provision does not
5 encompass persons under the age of 18 such as waiters,
6 cashiers, ticket vendors, and the like, with whom the
7 defendant must deal with in order to obtain ordinary and usual
8 commercial services.

9 The defendant shall not loiter within 100 feet of
10 any park, school property, playground, arcade, amusement park,
11 day-care center, swimming pool, community recreation field,
12 zoo, youth center, video arcades, carnivals, circus --
13 circuses, or other places primarily used or which would
14 reasonably be expected to be used by children under the age of
15 18, without prior written permission of U.S. Probation
16 Officer.

17 The defendant shall not purchase, possess,
18 control -- or control any cameras, camcorders, or movie
19 cameras without prior approval of the United States Probation
20 Officer.

21 Defendant shall not use, purchase, possess, procure,
22 or otherwise obtain any computer or electronic device that can
23 be linked to any computer networks, bulletin boards, Internet,
24 internet service providers, or exchange formats involving
25 computers, unless approved by the United States Probation

1 Officer. Such computers, computer hardware or software would
2 be subject to warrantless searches and seizure by the United
3 States Probation Officer.

4 The defendant shall not allow -- excuse me. The
5 defendant shall allow the United States Probation Officer, or
6 other designee, to install software designed to monitor
7 computer activities on any computer that the defendant is
8 authorized to use. This may include, but is not limited to,
9 software that may record any and all activities on all
10 computers that the defendant may use, including capture of
11 keystrokes, application information, internet use history,
12 email correspondence, or chat room conversations. The
13 defendant shall pay any costs related to the monitoring of
14 such computer usage.

15 The defendant shall not use or have installed any
16 programs specifically and solely designed to encrypt any data,
17 file folders, or volumes of any media.

18 The defendant shall, upon request, immediately
19 provide the probation officer with any and all passwords
20 required to access data compressed or encrypted for storage by
21 any software.

22 The defendant shall provide a complete record of all
23 passwords, internet service providers, email addresses, email
24 accounts, and screen names, and the like, to the probation
25 officer and shall not make any changes without the prior

1 approval of United States Probation Officer.

2 The defendant shall not use, possess, or control any
3 bootable linux or counter-forensic tools.

4 The defendant shall not have any social networking
5 accounts without the approval of the United States Probation
6 Officer.

7 During the period of supervised release, the
8 defendant shall notify all employers, family, friends, and
9 others with whom he has regular contact of his conviction and
10 history as a sex offender and that the defendant is being
11 supervised by the United States Probation Officer.

12 The defendant shall not possess, any sadomasochistic
13 bindings, restraints, or handcuffs.

14 The defendant shall not hitchhike or pick up any
15 hitchhikers.

16 The defendant shall not possess any children's
17 clothing, toys, games, and the like, without the permission of
18 the United States Probation Officer.

19 The defendant shall not be employed in any position
20 or participate as a volunteer in any activity that involves
21 direct or indirect contact with children under the age of 18,
22 without the written permission of the United States Probation
23 Officer. And under no circumstances may the defendant be
24 engaged in a position that involves being in a position of
25 trust or authority over any person under the age of 18.

1 The defendant shall not possess any legal or illegal
2 or pornographic material, nor shall the defendant enter any
3 location where such materials can be accessed, obtained, or
4 viewed, including pictures, photographs, books, writings,
5 drawings, videos, or video games.

6 It is ordered that the defendant shall pay the
7 United States a special assessment in the amount of \$300.

8 The defendant finds that -- excuse me.

9 The Court finds that the defendant does not have the
10 ability to pay a fine or interest, and having considered the
11 factors noted in 18 U.S.C. Section 3572(a), the Court would
12 waive the payment of fine and interest in this case.

13 The defendant shall forfeit his interest in those
14 properties as identified in Document 32, the Consent Order and
15 Judgment of Forfeiture previously entered in this case by the
16 Court on August 27, 2015.

17 Payment of the criminal monetary penalties shall be
18 due and payable immediately.

19 The Court has considered the financial and other
20 information contained in the Presentence Report and finds that
21 the following is feasible:

22 If the defendant is unable to pay any monetary
23 penalty immediately, during the period of imprisonment payment
24 shall be made to the Federal Bureau of Prisons Inmate
25 Financial Responsibility Program.

1 Upon release from imprisonment, any remaining
2 balance shall be made in monthly installments of no less than
3 \$50, to commence within 60 days of release until paid in full.

4 Throughout the period of supervision the probation
5 officer shall monitor the defendant's economic circumstances,
6 and shall report to the Court with recommendations as
7 warranted, any material changes that may affect the
8 defendant -- any material changes that affect the defendant's
9 ability to pay any court-appointed penalties.

10 I would also include in the judgment, the
11 restitution as set forth by the agreement of the parties, and
12 I would hold the judgment until that has been submitted. I
13 won't enter one judgment and then amend it after that has been
14 submitted.

15 I believe I failed to state that the 150-month
16 sentence is on each of Counts One through Three, with those
17 terms to be served concurrently.

18 Ms. Coleman, are there any other issues regarding
19 either the sentence or the judgment that need to be addressed?

20 MS. COLEMAN: Your Honor, we would like to make an
21 objection on the record to four of the sex offender conditions
22 of supervision that we feel are unconstitutionally vague.

23 The first one is the loitering. Because loitering
24 is not defined. Basically we feel that is constitutionally
25 vague and what activities constitute loitering.

1 The second is the employment provision, in that it
2 prohibits any activity that involves direct or indirect
3 contact.

4 Our objection is that indirect contact with children
5 is also not defined, so it does not give fair notice and
6 warning of what qualifies.

7 The third is the notification to employers, family
8 and friends. Our objection is that the, "others with whom he
9 may have regular conduct" again, it is not defined, it is
10 constitutionally vague, and has no limitations.

11 And then the fourth is the possession of the
12 children's clothing, toys, and games. Again, it's vague and
13 there's no real inclination in the record for the necessity of
14 the condition.

15 THE COURT: Well, your objection will be noted in
16 the record.

17 Obviously, these are -- with the wording of those
18 conditions, it is as set forth through the Administrative
19 Office of the Courts and from the Sentencing Commission, as I
20 understand it. So if you want to challenge those on appeal,
21 you certainly have the right to do that. I'll be very
22 interested to learn what you find out as a part of that.

23 MS. COLEMAN: Thank you, Your Honor.

24 THE COURT: Anything else?

25 MS. COLEMAN: Your Honor, we would just request that

1 the Court provide recommendation that Mr. Awtrey be housed as
2 close to the Asheville area as possible.

3 And also we may want the judgment to reflect he has
4 been in custody since his state arrest on these charges, since
5 October 22, 2013. Those charges were later dismissed.

6 THE COURT: I will include in the judgment the
7 statement that the defendant was held in state custody on
8 related charges from October 22, 2013, to February 6, 2015.
9 And that this is provided in the judgment for the purpose of
10 allowing the defendant proper credit pursuant to Section 3585.

11 MS. COLEMAN: Thank you, Your Honor.

12 THE COURT: I will also include in the judgment the
13 recommendation that the defendant be placed as close as
14 possible to Asheville, North Carolina, considering his
15 security classification.

16 MS. COLEMAN: Thank you, Your Honor.

17 THE COURT: Anything else?

18 MS. COLEMAN: No, Your Honor.

19 THE COURT: Mr. Thorneloe, anything else for the
20 government?

21 MR. THORNELOE: Your Honor, I don't know if I missed
22 it or the Court omitted it. Is the Court putting in a no
23 contact order with the two children ongoing?

24 THE COURT: Well, I didn't mention that because I
25 thought that the -- I thought one of the conditions is

1 sufficient to cover it. Because so long as the two children
2 are minors, they would fall within the written and verbal
3 communication provision. Of course once they're no longer
4 minors, that would expire.

5 Is there -- maybe I misunderstood what you were
6 asking for.

7 MR. THORNELOE: Your Honor, the request from the
8 family is that, even after they are no longer minors, that he
9 not have contact with them. That if contact would be resumed,
10 it would be only on the child's request and a change in
11 condition that way.

12 They will always be his children, they won't always
13 be children. But they're asking for that to be ongoing even
14 though they are no longer minors.

15 THE COURT: Okay. I misunderstood what you were
16 asking. That's by stipulation of the parties?

17 MR. THORNELOE: Yes, Your Honor.

18 THE COURT: Okay. And I will include that in the
19 judgment.

20 MR. THORNELOE: Thank you, Your Honor.

21 THE COURT: Well, that's not just as a term of
22 supervised release, that's even during the period of
23 incarceration.

24 MR. THORNELOE: We would prefer during incarceration
25 and supervised release, Your Honor.

1 THE COURT: So that is also a recommendation for
2 enforcement by BOP as well as a term of supervised release.

3 MR. THORNELOE: Yes, Your Honor.

4 THE COURT: Okay. Anything else?

5 MR. THORNELOE: Nothing further, Your Honor.

6 THE COURT: Mr. Awtrey, you have the right to appeal
7 this sentence, as well as the conduct of your stipulated
8 non-jury trial, to the Fourth Circuit Court of Appeals.

9 If you choose to appeal, you must file a written
10 notice of appeal with the Clerk of this Court within a period
11 of 14 calendar days following the date of entry of final
12 judgment in the case.

13 If you choose to appeal but do not have the funds
14 with which to appeal, you have previously been determined to
15 be indigent and may appeal at government expense.

16 Do you understand this right of appeal as I've
17 explained it to you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: In closing, Mr. Awtrey, I will say that
20 there are a number of things that you said as part of your
21 allocution that I think are very apt. Your actions have
22 obviously very negatively affected, not only your life, but
23 the lives of your family members. But at the same time that
24 doesn't mean that you are -- that everything is over. You
25 have figured out that there are ways that you can effect, in a

1 positive way, people who are around you. Keep that in mind.

2 These next years aren't going to be easy for you by
3 any means. But if you keep in mind that your objective is to
4 be a responsible person and to help others, you will give
5 yourself purpose in life. You don't have to waste these
6 years. They don't have to be wasted at all.

7 Wish you the best in that, Mr. Awtrey.

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: Defendant is remanded to the marshal.
10 This matter is concluded.

11 (The matter is concluded at 4:30 p.m.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF OFFICIAL REPORTER

4 I, Laura Andersen, Federal Official Court Reporter, in
5 and for the United States District Court for the Western
6 District of North Carolina, do hereby certify that pursuant to
7 Section 753, Title 28, United States Code that the foregoing
8 is a true and correct transcript of the stenographically
9 reported proceedings held in the above-entitled matter and
10 that the transcript page format is in conformance with the
11 regulations of the Judicial Conference of the United States.

12 Dated this the 18th day of August, 2016.
13
14

15 S/Laura Andersen
16 Laura Andersen, RMR
17 Federal Official Court Reporter
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